

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

HASSAN MANSOUR,

Plaintiff and Appellant,

v.

PATRICK DEGAS et al.,

Defendants and Respondents.

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B183943

(Los Angeles County  
Super. Ct. No. TC011334)

APPEAL from an order of the Superior Court for the County of Los Angeles.  
Josh M. Fredricks, Judge. Affirmed.

Rubin, Inc. and Russell M. Rubin for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith and Annie Verdries for Defendant and  
Respondent Compton Entertainment, Inc.

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## **SUMMARY**

The plaintiff in a personal injury lawsuit moved to vacate an order dismissing his lawsuit with prejudice. The motion was based on an asserted clerical error by the trial court in sending the order of dismissal to plaintiff's attorney at his previous rather than his current office address. Because the motion to vacate the dismissal order was not filed until more than ten months after plaintiff's counsel received written notice of the dismissal, the court did not abuse its discretion in refusing to set aside the order of dismissal.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Hassan Mansour filed a personal injury lawsuit on June 5, 1998 against several defendants. Three years later, on July 2, 2001, the trial court, noting no activity in the case for more than a year, issued an order to show cause (OSC), indicating its intent to dismiss the action unless good cause was shown for the delay in prosecuting the matter. The OSC was set for July 19, 2001. A notice of ruling filed on July 26, 2001 by Mansour's attorney, Russell M. Rubin, states that, at the July 19 hearing, the court scheduled a mandatory settlement conference (MSC) for August 10, 2001; a final status conference for August 21, 2001; and a trial for August 28, 2001. The civil case summary shows that Mansour's counsel failed to appear on August 10; the MSC was continued; and one of the defendants filed a notice "of OSC re dismissal" on August 13. Thereafter:

- On August 17, 2001, the case summary shows a "Status Conference - OSC Dismissal." The case summary entry refers to the "OSC re dismissal for plaintiff's counsel to appear at MSC on 8/10/01", presumably meaning counsel's failure to appear.<sup>1</sup>
- Several weeks later, on September 14, 2001, the court dismissed the case, with prejudice, "pursuant to Section 68608(b) of the Government Code

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<sup>1</sup> A declaration from plaintiff's counsel confirms the court dismissed the case based on his failure to appear, and states that "[a]t this time I am unsure why I did not attend that court date."

and/or Local Rule 7” (provisions concerning trial court delay reduction).

The court’s minute order states: “There being no appearance by either party and counsel having been ordered to appear if dismissal is not filed, the Court orders the case dismissed.”

The trial court’s minute order dismissing the case with prejudice was sent to Mansour’s counsel, Rubin, at his address of record, with directions to give notice to all other parties. Rubin, however, had previously moved his office to a different address, and had failed to comply with former rule 385 (now rule 2.200) of the California Rules of Court, which requires an attorney whose address changes while an action is pending to serve and file written notice of the change of address.<sup>2</sup>

After the September 14, 2001 dismissal with prejudice, the following events occurred:

- On October 24, 2001, a request for a partial dismissal with prejudice was filed as to defendant Crystal Park Hotel & Development Company, LLC, apparently after reaching a settlement just before the scheduled August 28, 2001 trial date.
- In July 2003, almost 21 months later, Rubin filed an amendment to Mansour’s complaint identifying Compton Entertainment, Inc. – the respondent in this appeal – as Doe Defendant 11. Compton Entertainment had been in bankruptcy proceedings since March 1998, before Mansour’s complaint was filed. In June 2003, the bankruptcy court granted Mansour’s motion for relief from the automatic stay of proceedings against Compton Entertainment, with the proviso that enforcement of a judgment would be limited to collection upon any available insurance.
- When Compton Entertainment’s counsel undertook its representation in Mansour’s suit in 2003, she discovered the case had been dismissed with

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<sup>2</sup> The California Rules of Court were reorganized effective January 1, 2007, and former rule 385 is now rule 2.200. The new rule is unchanged in substance.

prejudice two years earlier. In December 2003, she notified Rubin that the trial court case summary reflected a dismissal with prejudice. Counsel's declaration states Rubin told her on December 2, 2003 "that the case was not dismissed, no matter what the court records showed." Compton Entertainment's counsel then obtained a copy of the dismissal from the court.

- On April 2, 2004, Compton Entertainment's counsel wrote to Rubin, provided him with a copy of the dismissal order, and advised him that she was closing her file in the matter.
- In November 2004, Rubin attempted to file a request for entry of Compton Entertainment's default, but the court rejected the filing on November 29, 2004, "due to the matter being dismissed." Rubin states he "was not aware of the dismissal until my Request for Entry of [Default]."
- On February 25, 2005, Mansour moved to set aside the September 14, 2001 dismissal under Code of Civil Procedure section 473, subdivision (d), "on the grounds that the dismissal was entered without notice to plaintiff's counsel."<sup>3</sup> Section 473, subdivision (d) authorizes the court to correct clerical mistakes in its judgments or orders as entered, "so as to conform to the judgment or order directed," and to set aside any void judgment or order.<sup>4</sup>

The trial court denied Mansour's motion to set aside the dismissal on April 4, 2005. Mansour sought reconsideration of the ruling, arguing that he filed several documents with the court before the case was dismissed in September 2001, using counsel's then-current address, and that the court had sent notices to counsel's current

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<sup>3</sup> All further statutory references are to the Code of Civil Procedure unless otherwise stated.

<sup>4</sup> Section 473, subdivision (d) states: "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

address before sending the dismissal order to the previous address. The motion for reconsideration was denied.

Mansour filed a timely appeal from the order denying his motion to set aside the September 14, 2001 order of dismissal.<sup>5</sup>

### **DISCUSSION**

Mansour contends the trial court abused its discretion in denying his motion to set aside the September 14, 2001 order dismissing the case. We find no error.

The crux of Mansour's argument is that the dismissal is void because the trial court failed to comply with section 1013, subdivision (a), which governs service by mail, and which requires the document served to be "addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail . . . ."<sup>6</sup> (§ 1013, subd. (a).) Rubin points out that he filed several documents with the court using his new address, beginning in August 1999, and that the court itself used his new address on two previous occasions. Further, several courts have held that section 1013, subdivision (a) is

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<sup>5</sup> Compton Entertainment argues the appeal should be dismissed on several grounds, including that the notice of appeal refers to an order entered on April 4, 2004, rather than on April 4, 2005. It seems clear this was a typographical error, and Mansour's intention was to appeal from the April 4, 2005 order denying his motion to set aside the dismissal under section 473. (See *Peltier v. McCloud R. R. Co.* (1995) 34 Cal.App.4th 1809, 1815, 1814 [order of dismissal is a judgment for purposes of appeal; denial of a section 473 motion seeking to set aside a discretionary dismissal is appealable].) Compton Entertainment purports not to understand from which order Mansour has appealed, pointing out that Mansour attached a copy of the September 2001 dismissal order to its case information statement, rather than a copy of the order being appealed. While we do not condone errors in appellate procedure, "it is reasonably clear what appellant was trying to appeal from, and . . . respondent could not possibly have been misled or prejudiced." (*Luz v. Lopes* (1960) 55 Cal.2d 54, 59.)

<sup>6</sup> As Mansour points out, section 1019.5, subdivision (b), provides that: "When a motion is granted or denied on the court's own motion, notice of the court's order shall be given by the court in the manner provided in this chapter, unless notice is waived by all parties in open court and is entered in the minutes."

applicable to the court. (*Lee v. Placer Title Co.* (1994) 28 Cal.App.4th 503, 510 (*Lee*) [because notice “was not sent to the ‘office address as last given by [litigant] on any document filed in the cause,’ as required by section 1013, subdivision (a), the notice was not effective” and the dismissal subsequently entered was void]; *Triumph Precision Products, Inc. v. Insurance Co. of North America* (1979) 91 Cal.App.3d 362, 365 (*Triumph*) [section 1013, subdivision (a) “is applicable to the mailing by a court clerk of notice announcing the entry of an appealable judgment or order”]; *Valley Vista Land Co. v. Nipomo Water & Sewer Co.* (1967) 255 Cal.App.2d 172, 174 [clerk’s mailing of notice of entry of judgment “must, in all respects, comply with the provisions of the Code of Civil Procedure relating to service by mail”].) Mansour points out that service by mail “requires strict compliance with all statutory requirements” (*Lee, supra*, 28 Cal.App.4th at p. 509), and that where a notice is improperly addressed, “it is as though notice were never mailed by the clerk.” (*Triumph, supra*, 91 Cal.App.3d at p. 365.)

We do not disagree with the proposition that the trial courts are required to comply with statutory requirements for service by mail, and that a notice mailed to the wrong address by the clerk may be void. In this case, however, we need not consider whether the court was required to and failed to comply with section 1013, subdivision (a), or whether the failure of Mansour’s attorney to comply with court rules requiring written notice of an address change affects the applicability of section 1013, subdivision (a). The controlling fact is that Mansour’s counsel, Rubin, was notified of the dismissal order by opposing counsel in December 2003, and on April 2, 2004, Rubin was provided with an actual copy of the dismissal order. Nonetheless, Rubin did not trouble to file a motion to set aside the dismissal order until February 25, 2005, more than a year after he was notified by telephone of the dismissal, and more than ten months after he had in hand incontrovertible evidence of the dismissal. The court has the discretion to determine whether an order should be set aside under section 473 and, under these circumstances, it would be impossible to view the court’s denial of relief as an abuse of discretion.

**DISPOSITION**

The order is affirmed. Compton Entertainment, Inc. is entitled to recover its costs on appeal.

**CERTIFIED FOR PUBLICATION**

BOLAND, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.